

IT 01-15

Tax Type: Income Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	Docket No.	01-IT-0000
OF THE STATE OF ILLINOIS)	FEIN	00-0000000
v.)	Tax Year	1998
"TRUST #1",)	John E. White,	
Taxpayer.)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: "John Doe" appeared for "Trust #1"; Jessica Arong
appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after "Trust #1" ("taxpayer" or "the Trust") protested a Notice of Denial ("Denial") the Illinois Department of Revenue ("Department") issued to it. The Denial was issued in response to an amended return the Trust filed to request abatement and return of a late filing penalty it paid regarding the Trust's 1998 Illinois Fiduciary Income and Replacement Tax Return.

Prior to hearing, the parties agreed that the issue was whether reasonable cause exists for the Department to excuse the late filing penalty. At hearing, taxpayer offered into evidence certain documents and the testimony of its trustee. I am including in this recommendation findings of fact and conclusions of law. I recommend that the issue be resolved in favor of the taxpayer, and that the penalty be abated.

Findings of Fact:

1. Taxpayer is a charitable trust. Taxpayer Ex. 1.
2. "John Doe" is the trustee of the Trust. Taxpayer Ex. 1 (copy of taxpayer's form

IL-843, Illinois Amended Return or Notice of Change in Income, for 1998).

3. Taxpayer filed its 1998 Illinois Fiduciary Income and Replacement Tax Return ("1998 return"), but without the required signature of the trustee. Department Ex. 3 (copy of 1998 return); Department Ex. 2 (LTR-351, Error Notice Response, dated 6/26/00).
4. The Department received the Trust's 1998 return on or about 5/5/99. *See* Department Ex. 3 (At the bottom of the 1998 return, the initials "DR" are circled, and a handwritten number, 99125, is written on the line adjacent to the initials. I take notice that the "DR" means date received, and the number indicates that the return was received or filed on the 125th day of 1999). The Department does not assert that the Trust's 1998 return was not timely filed.
5. The full amount of the tax shown due on the face of the Trust's 1998 return had already been paid via prior payments. Department Ex. 3; Testimony of "John Doe" ("Doe").¹
6. The Department's 6/26/00 Error Notice notifies the Trust that since it did not file a signed return within 30 days of the 10/15/99 notice, it was assessed a late filing penalty. Department Ex. 2. It further notified the Trust that if it had any questions, it should notify the writer in writing or via phone. *Id.*
7. The Department's 6/26/00 Error Notice states that the Department issued a notice to the Trust, dated 10/15/99, informing it that its 1998 return had been filed without being signed. Department Ex. 2. A copy of the Department's 10/15/99

¹ With the parties' agreement, the hearing was not recorded by a court reporter or by means of audio tape, so citations to taxpayer's testimony, or the conduct of the hearing, will be made without reference to pages in a transcript.

notice, or of its complete contents, however, is not part of this record.

8. "Doe" paid the late filing penalty of \$403.22 on the Trust's behalf, after receiving a bill in that amount from the Department. Taxpayer Ex. 1 (Part 1, question 4); Department Ex. 2.
9. On 10/1/00, Block, as trustee, filed an amended return, form IL-843, to "seek the dismissal of late payment penalty & [the] return of \$403.22." Taxpayer Ex. 1 (Part 1, question 4).
10. On December 5, 2000, the Department denied the Trust's amended return / claim for refund of the late filing penalty. Department Ex. 1.

Conclusions of Law:

When the Department introduced the Notice of Denial into evidence under the certificate of the Director, it presented prima facie proof that the Trust was liable for the late filing penalty authorized by § 3-3(a-5) of the Uniform Penalty and Interest Act ("UPIA"). 35 ILCS 735/3-3(a-5); Branson v. Department of Revenue, 68 Ill. 2d 247, 261, 659 N.E.2d 961, 968 (1995). The Department's prima facie case is a rebuttable presumption. *See Branson*, 68 Ill. 2d at 261, 659 N.E.2d at 968 ("After the Department presents a prima facie claim for tax penalty liability, our construction of section 13½ places the burden on the taxpayer to establish that one or more of the elements of the penalty are lacking."). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department's assessment, or merely by denying knowledge of a tax deficiency. *See Branson*, 68 Ill. 2d at 267, 659 N.E.2d at 971 ("... lack of willfulness is not proved simply by denying conscious awareness of a tax deficiency that could have been easily investigated by an inspection of corporate records."); A.R. Barnes & Co. v. Department of

Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist. 1988). Instead, a taxpayer has the burden to present evidence that is consistent, probable and closely identified with its books and records, to show that the assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958); A.R. Barnes & Co., 173 Ill. App. 3d at 833-34, 527 N.E.2d at 1053.

This matter involves a return that was admittedly filed unsigned by the trustee of the taxpayer. *See* Department Ex. 3. Section 3-3 of the Uniform Penalty and Interest Act (“UPIA”) provides that a late-filing penalty shall not apply “[i]f any unprocessable return is corrected and filed within 30 days after notice by the Department” 35 ILCS 735/3-3(a-5). Section 3-2(d) of the UPIA defines a processable return, and it provides, in pertinent part:

*** In order for an original return to be processable for purposes of this Section, it must be in the form prescribed or approved by the Department, signed by the person authorized by law, and contain all information, schedules, and support documents necessary to determine the tax due and to make allocations of tax as prescribed by law. For the purposes of computing interest, a return shall be deemed to be processable unless the Department notifies the taxpayer that the return is not processable within 90 days after the receipt of the return; however, interest shall not accumulate for the period following this date of notice.

35 ILCS 735/3-2(d).

Section 3-8 of the UPIA also provides, *inter alia*, that, “[t]he penalt[y] imposed ... [by] ... § 3-3 ... of this Act ... shall not apply if the taxpayer shows that his failure to file a return ... was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.” 35 ILCS 735/3-8. The Department exercised the authority expressly granted to it by § 3-

8 of the UPIA, and its regulation on reasonable cause provides, in pertinent part:

§ 700.400 Reasonable Cause

* * *

b) The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.

c) A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return.

d) The Department will also consider a taxpayer's filing history in determining whether the taxpayer acted in good faith in determining and paying his tax liability. Isolated computational or transcriptional errors will not generally indicate a lack of good faith in the preparation of a taxpayer's return.

e) Examples of Reasonable Cause. The following non-exclusive list of situations will constitute reasonable cause for purposes of the abatement of penalties:

* * *

7) Reasonable cause will exist for purposes of abatement of the penalty if a taxpayer makes an honest mistake, such as inadvertently mailing a Department of Revenue check to a local government, another state's Department of Revenue, or to the Internal Revenue Service.

* * *

f) Relevant factors used by the Department in determining the existence of reasonable cause.

1) Could the taxpayer's federal filing status have caused confusion about his or her Illinois filing requirements? Under Illinois law, many taxpayers that

are not required to file with the Internal Revenue Service are required to file with the Department.

2) Does the taxpayer's reason address the penalty assessed? For example, if a taxpayer was assessed both a late filing and late payment penalty for the same return, the taxpayer's explanation of the failure to file and pay may apply to one penalty, but not the other.

3) Does the length of time between the reason cited and the actual violation support abatement? If the taxpayer cites a specific event or set of events (e.g., illness, unexpected absence, or natural disaster) or set of events that led to the imposition of the penalty, the Department will determine whether those events are directly related to the return or payment under review.

4) Could the event cited have been reasonably anticipated? Was the event one that should have been anticipated (e.g., a vacation or scheduled absence) or was it unexpected, unavoidable, or otherwise unplanned (e.g., an emergency or disaster).

5) Was ordinary business care and prudence exercised? In the absence of new or unusual circumstances, most filing and payment requirements are common knowledge or are readily available to most taxpayers. If the taxpayer did all that could be reasonably expected of him or her and was still unable to file or pay on time, reasonable cause may be present.

86 Ill. Admin. Code § 700.400.

Here, the Department's 6/26/00 letter to taxpayer states that a 10/15/99 notice informed taxpayer that its return was not signed. Department Ex. 2. While "Doe" does not dispute that the Department might have sent the 10/15/99 notice, he did testify that he never received it, and that the first notice he received was when he received a bill for the penalty, which billing statement is also referred to in the Department's 6/26/00 notice. Department Ex. 2. "Doe" testified that, after reading the billing statement, he did not appreciate that the Trust's return had been filed unsigned, nor did he appreciate what particular steps he had to take to cure the error. The type of information that is available to a taxpayer is a fact that is relevant to whether "Doe" exercised ordinary business care

and prudence when attempting to respond, on the Trust's behalf, after becoming aware that there was a problem with the Trust's 1998 return. *See* 86 Ill. Admin. Code § 700.400(b)-(c).

The Trust, moreover, did not fail to file a return, it failed to file one with a required signature. Department Ex. 3. "Doe's" particular failure, moreover, was not one that prevented the Department from confirming the amount of tax due. *See* 35 ILCS 735/3-2(d). "Doe" testified that his failure to sign the return was an oversight, and was not done to delay the processing of the Trust return. He also testified that he had made no similar mistake during the five prior years for which he filed returns as trustee of the Trust (*see* Department Ex. 3, p. 2 (Part V, question 3a (Trust created on 2/2/93))), and asked that the Trust's filing history be examined to confirm his testimony on that point. Finally, "Doe" testified that his negligence when failing to sign the return before mailing it to the Department was the result of stress at a time when he was moving his personal residence. *See* Taxpayer Ex. 2.

The Department did not dispute "Doe's" testimony regarding the Trust's prior filing and payment history. A taxpayer's filing and payment history is a fact properly taken into account when considering whether a taxpayer made a good faith effort to file a return in a timely fashion. 86 Ill. Admin. Code § 700.400(d). The Trust's prior history, therefore, mitigates in favor of a conclusion that Block's failure to sign the return was an isolated incident, similar to an isolated computational error, which the Department's regulation states will not generally indicate a lack of good faith. *Id.*

Further, the Department's pertinent regulation also provides that "[r]easonable cause will exist for purposes of abatement of the penalty if a taxpayer makes an honest

mistake” 86 Ill. Admin. Code § 700.400(e). After taking into account all the facts of record, I conclude that "Doe's" failure to sign the Trust's 1998 return was an isolated and honest mistake, which he subsequently cured by filing a signed, amended return once he understood the basis for the penalty, and the manner in which his error might be cured. Taxpayer Ex. 1.

Conclusion:

I recommend that the Director reconsider the Department's Denial, and that the amount of the late filing penalty previously paid by the Trust regarding tax year 1998 be abated and refunded, with interest, pursuant to statute.

10/17/01
Date

Administrative Law Judge